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(27)

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आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश |
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**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**DIVISION BENCH:**

**HON'BLE MR. L.C. BHADOO &**
**HON'BLE MR. DHIRENDRA MISHRA, JJ**

**CRIMINAL APPEAL NO.1046/2001**

**APPELLANT** Ramnath Harijan, son of Jairam Harijan, aged 45 years, Occupatioin- Labourer, resident of Village Chhindkalo, P.S. Darima, District Sarguja (C.G.)

Vs

**RESPONDENT** State of Chhattisgarh through P.S. Darima, District Sarguja (Chhattisgarh)

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Present:
Mr. Rahul Mishra, Advocate for the appellant.
Mr. Ashish Shukla, Addl. Public Prosecutor for the respondent-State.

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**O R A L J U D G M E N T**

**(28th June, 2007)**

**Per L.C. Bhadoo, J:**

This appeal is directed against the judgment of conviction and order of sentence dated 22nd June, 2001 passed by learned 3rd Additional Sessions Judge, Sarguja, Ambikapur in S.T. No. 166/2000 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the IPC, sentenced him to undergo rigorous imprisonment for life.

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Case of the prosecution, in brief, is that on 20.3.2000 some dispute arose between accused Ramnath & deceased Tegnuram, who are closely related. After the dispute, when Tegnuram was taking meal in his house, accused went there, dragged him out of the house and attacked him with an axe as a result of which Tegnuram became unconscious. Incident was seen by the wife of Ramnath, she informed Thakur Prasad Singh, who in turn lodged the report in the Police Station Darima. Based on the report of Thakur Prasad, the police registered an offence under Section 307 of the IPC vide Ex.P-2. Tegnuram was taken to the hospital where his injuries were examined and he was being treated in the Ambikapur hospital where he breathed his last on 21.3.2000. On receiving merg intimation (Ex.P-15) from Ambikapur Hospital offence was converted into Section 302 of IPC. After giving notice to the panchas, inquest Ex.P-4 was prepared on the body of Tegnuram. Postmortem on the body of Tegnuram was conducted by Dr. Azad Bhagat (PW-7), who prepared the postmortem report Ex.P-6 and opined that the cause of death is injury to brain and intracranial haemorrhage. He noticed as many as 12 injuries on the body of deceased. Site plan (Ex.P-1) was prepared by Halka Patwari. While in police custody the accused gave memorandum (Ex.P-11) in pursuance of which one axe was recovered under Ex.P-12, the same was sent for chemical examination to the doctor, who after examination gave his report Ex.P-7 and opined that injuries

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sustained by Tegnuram could be caused by the axe in question. Seized articles were sent to Forensic Science Laboratory, Sagar from where report Ex.P-20 was received and as per FSL report there was blood on the axe.

After completion of usual investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Ambikapur who in turn committed the case to learned Sessions Judge, Sarguja from where learned Additional Sessions Judge received the case on transfer for trial. The prosecution in order to establish the charge against the accused/appellant examined 13 witnesses. Statement of accused/appellant was recorded under Section 313 of Cr.P.C. in which he denied the material appearing against him in the prosecution case and stated that the deceased after consuming liquor had quarreled with his enemies and it is possible that in that quarrel he sustained injuries. He has further stated that he is innocent and has been falsely implicated in the crime. He examined Kaleshwari, wife of deceased in his defence as DW-1.

Learned Additional Sessions Judge after hearing the arguments of learned counsel for the respective parties, convicted and sentenced the accused/appellant, as aforementioned.

We have heard Mr. Rahul Mishra, Advocate for the appellant and Mr. Ashish Shukla, Addl. Public Prosecutor for the respondent/State.

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As far as the question of homicidal death of Tegnuram is concerned, the same has not been disputed by learned counsel for the appellant. Moreover, from the ocular evidence of Chhotu (PW-14), son of deceased, who has categorically stated that the accused attacked his father with the axe in his presence, as also from the extrajudicial confession made by the accused before Thakur Prasad (PW-2) and that the above ocular evidence and extrajudicial confession is corroborated by the medical evidence of Dr. Azad Bhagat (PW-7), who has conducted the postmortem and stated that death of Tegnuram was homicidal in nature, it is established that death of Tegnuram was homicidal.

As far as involvement of the accused/appellant in the crime in question is concerned, learned counsel for the accused/appellant argued that the prosecution witnesses have not been able to establish that the accused was the author of crime in question. He further submits that the deceased first attacked the accused in which the accused sustained injuries on his body and thereafter, in right of private of defence the accused attacked the deceased, as such the offence against the accused/appellant does not travel beyond Section 304-II of the IPC, as there was no intention of the accused to cause death of Tegnuram.

On the other hand, learned Additional Public Prosecutor for the State supported the judgment of the trial court.

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In order to appreciate the arguments advanced by learned counsel for the accused/appellant, we have examined the evidence of PW-4 Chhotu (PW-4), aged about 11 years, son of deceased, who has stated that accused Ramnath is his maternal uncle who attacked his father with the axe, accused attacked his father in connection with some land dispute, as the accused was asking for the land which was in the share of his mother. Accused attacked his father on his head, face, leg and other parts of the body. In the cross-examination, this witness has stated that it is incorrect to say that he had not witnessed the crime. He stated on his own that accused after inflicting injuries on the body of his father sprinkled water and covered the same with a jute bag. He has further stated that it is incorrect to say that at the time of incident he was inside the house. In the cross-examination of this witness the defence has not been able to elicit any circumstance, which discredit the evidence of this witness or which show that the deceased, in fact, was aggressor or he in the first instance attacked the accused and thereafter only the accused attacked the deceased.

The above ocular evidence of Chhotu (PW-4) is corroborated by Thakur Prasad (PW-2) before whom the accused made extrajudicial confession. This witness has stated that on the fateful day he was at his residence, at about 1.45 p.m. wife of accused came and informed him that beating has taken place in her house, therefore, he should accompany her

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and see. He went to the house of accused and saw that Tegnuram was lying in unconscious condition in the courtyard of the house of accused, there were cut injuries on the head, leg, eyes and ear of Tegnuram. Ramnath came out of his house and informed that Tegnuram after consuming liquor started quarrelling with him, therefore, he attacked him with the axe. He also disclosed that Tegnuram attacked him with an axe and thereby inflicted injury on his temporal region. Thereafter he went to the police station and lodged the report. In cross-examination, he has stated that when he went to the house of accused, Tegnuram was lying in unconscious condition. He has further stated that it is incorrect to say that he saw only one injury on the body of Tegnuram. It is incorrect to say that the accused disclosed him that Bhigu, Banta & others have attacked the deceased. Therefore, from the evidence of this witness it is established that the accused made extrajudicial confession regarding attack made by him on the body of deceased Tegnuram with an axe.

There is nothing in the cross-examination of PW-4 Chhotu that in fact at the time of attack made by the accused, deceased Tegnuram was also holding axe. Accused was also medically examined by Dr. O.P. Shrivastava (PW-8) regarding the injuries and he has stated that there was one abrasion in dry condition on the back portion of left ear, one abrasion on the left side of neck and one abrasion on the right elbow. He

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has further stated that all the injuries were simple in nature caused by blunt and hard object.

Therefore, in view of the above evidence it is established that all the injuries were simple in nature, caused by hard and blunt object, whereas, perusal of postmortem report of deceased Tegnuram reveals that as many as 12 injuries were inflicted on his body i.e.

1. Repaired wound over frontal region longitudinally placed at the central part 6 cm in size.
2. incised wound over right parietal region obliquely placed 2cm x.5cm x .5 cm in size.
3. Repaired wound over left frontal region above the left eyebrow, obliquely placed 3 cm in size.
4. contusion (abraded) over right frontal region rounded 1x1cm in size.
5. Repaired wound over left occipito parietal region obliquely placed 4.5 cm in size.
6. incised wound over left occipital region just behind the left ear lobule 4cm x 2.5cm x 1 cm in size obliquely placed.
7. Incised wound below left ear lobule, longitudinally placed 3cm x 1cm x 0.5cm in size.
8. Abraded contusion over right forearm above the left palm, bluish black 3cm x 2cm in size.
9. Abrasion over right elbow joint on post aspect 0.5cm x 0.5cm in size bluish black.
10. Repaired wound over right leg on medial side at lower 1/3$^{rd}$ region and swelling.

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11. Repaired wound over right leg on lateral side over lower 1/3rd region 3.5 cm size.
12. Abrasion over left knee joint on medial side two in number each 0.5cm x 0.5cm in size.
13. There was a depressed fracture over left occipital bone rounded in shape size 4x4 cm. There was a fracture of left temporal bone longitudinally placed. Fracture of right tibia and right fibula at its lower end.

Nature of all the above injuries establishes that the accused mercilessly attacked the deceased almost all over the body particularly injuries were inflicted on the vital part of the body i.e. head. There is no cross-examination on this aspect that the deceased was holding any deadly weapon. The deceased was armless and the accused attacked the deceased in a cruel manner. As the deceased was not armed with any weapon, the accused was having axe in his hand, he continuously attacked the deceased, therefore, right of private defence to the accused was not available for the reason that as per Section 102 of the IPC right of private defence of body continues as long as apprehension of danger to the body exists. On the contrary to the arguments advanced by learned counsel for the appellant, the accused has stated that in fact the deceased quarreled with his enemies and in that process they attacked him, he has not taken any defence that first the deceased attacked him and that is why in a right of private defence he attacked him.

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| | Therefore, we do not find any substance in the argument of learned counsel for the appellant that there is evidence to show that right of private defence was available to the accused or that the accused was not having any intention to cause death of deceased Tegnuram. The nature of weapon with which accused attacked, place of the body where the accused attacked and the number of injuries inflicted with the deadly weapon by accused establishes the intention of accused that he attacked the deceased with an intention to cause his death.<br><br>For the foregoing reasons, we are of the considered opinion that there is no illegality or infirmity in the judgment of the trial court, the appeal of the appellant being devoid of any substance is liable to be dismissed and the same is hereby dismissed.<br><br>**Sd/-**<br>**L.C. Bhadoo**<br>**Judge**<br><br>**Sd/-**<br>**Dhirendra Mishra**<br>**Judge** |
| | Roshan/- | |